85-629

Supreme Court, U.S.
FILED
NOV 16 1985
JOSEPH F. SPANIOL, JR.
CLERK

NUMBER_____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

GLADYS CUNNINGHAM, PETITIONER

VERSUS

HOUSING AUTHORITY OF THE CITY OF OPELOUSAS d/b/a OPELOUSAS HOUSING AUTHORITY, RESPONDENT

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

FELIX A. DEJEAN, III
OF
LAW OFFICES OF FELIX A. DEJEAN, III
A Professional Law Corporation
129 North Court Street
Opelousas, Louisiana 70570
Telephone: 318/948-8276
Attorney for Respondent, Housing Authority of the City of Opelousas d/b/a Opelousas Housing Authority

13pp

QUESTIONS PRESENTED

1. Should the Court grant a writ of certiorari where the District Court of the Western District of Louisiana and the Fifth Circuit Court of Appeals have factually determined that petitioner, Gladys Cunningham, failed to prove her case of sexual discrimination.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF AUTHORITIES	iii
STATEMENT OF THE CASE	1
SUMMARY OF ARGUMENT	2
ARGUMENT	3
CONCLUSION	5
CERTIFICATE OF SERVICE	6

TABLE OF AUTHORITIES

Page

CASES

McDonald Douglas Corp.,
411 U.S. 792 (1973) 2, 3, 4

Pullman-Standard v. Swent,
456 U.S. 273, 102 Supreme Court 1781 (1982) . 4

Lyford v. Schilling,
750 Fed.2d 1341, Fifth Circuit 1985 4

NUMBER_____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

GLADYS CUNNINGHAM, PETITIONER

VERSUS

HOUSING AUTHORITY OF THE CITY OF OPELOUSAS d/b/a OPELOUSAS HOUSING AUTHORITY, RESPONDENT

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

STATEMENT OF THE CASE

Petitioner, Gladys Cunningham, filed suit on November 27, 1981, pursuant to Title 7, "Civil Rights Act of 1964", 42 U.S.C. 2000(e) et seq. Specifically, petitioner alleged that on July 4, 1977, defendant, Opelousas Housing Authority, practiced racial and sexual discrimination against her by not hiring petitioner, Gladys Cunningham, to fill the vacant executive directorship seat with the Opelousas Housing Authority. The claim of racial discrimination was voluntarily dropped by plaintiff. This matter was tried before Honorable Eugene Davis of the Western District Court of Louisiana. The

District Court concluded that following the rules set out in McDonald Douglas Corp., 411 U.S. 792 (1973), the defendant, Opelousas Housing Authority, had articulated a legitimate, non-discriminatory reason for not hiring Mrs. Cunningham, and thus successfully rebutted petitioner's prima facia case of discrimination. The District Court further concluded that under McDonald petitioner ultimately failed in her burden to prove that this apparent explanation offered by the defendant in declining to hire her was only a "pretext of discrimination", and as such, dismissed petitioner's claim.

Petitioner appealed this decision to the Fifth Circuit Court of Appeal, alleging that the District Court erred in determining that the legitimate non-discriminatory reason was not a "legitimate non-discriminatory reason" as ennunced by McDonald. The Fifth Circuit Court of Appeals did not reach the particular specific allegations of error by finding that "by the time a fully tried case reaches us on appeal, the parties showing at the preliminary levels of the framework is largely irrevelant. . .We need address only the propriety of the ultimate findings of discrimination vel non." The Fifth Circuit further concluded that following that standard the District Court was not clearly erroneous in finding that Cunningham failed to prove discrimination on the basis of sex. Additionally, the Fifth Circuit Court of Appeals also ruled that there was no error in allowing the District Court to call witnesses on its own motion as was done in this particular case, and, as such, found no error in the District Court's calling of additional witnesses after this mater was tried on its merits.

SUMMARY OF ARGUMENT

The District Court found that the defendant, Opelousas Housing Authority, in defeating petitioner's claim for gender based discrimination had "articulated a legitimate non-discriminatory reason" for not hiring petitioner for the position of executive director. Specifically, the District Court

found that the majority of the Board of Directors hired Bill Soileau for the position of executive director as a "reaffirmation of the March 19, 1977, decision by three board members to repay Soileau for his political support of Powers (then mayor of Opelousas) by appointing Soileau as the executive director." Under these circumstances the burden then shifted to the plaintiff to prove that the apparent explanation offered by the defendant for declining to hire plaintiff was only a "pretext for discrimination." The Court then found that Cunningham failed to meet this burden. Additionally, the Fifth Circuit Court of Appeals, on appeal, while not addressing the specific allegation of error that a political debt is not a legitimate non-discriminatory reason, concluded that petitioner simply failed to prove her case of sexual discrimination practice by the Opelousas Housing Authority Board of Directors. Finally, the Fifth Circuit found no abuse of discretion by the District Court in calling its own witnesses after the Court had taken the case under submission.

ARGUMENT

Without doubt, the Trial Court was not in error in determining the reason why Bill Soileau was selected as executive director as opposed to petitioner, Gladys Cunningham. At trial, petitioner did establish a prima facia case of discrimination pursuant to McDonald by finding that petitioner, Mrs. Cunningham, was more qualified than the person that was eventually selected, i.e., Bill Soileau. Additionally, it also found that Gladys Cunningham had actually applied for the particular job, again following the dictates of McDonald Douglas Corp. However, the District Court correctly found that the burden then shifts to the defendant to articulate a non-discriminatory reason for the employer's rejection. The District Court so found in determining that the reason Mr. Soileau was selected instead of the petitioner, Mrs. Cunningham, was "to repay Soileau for his political support of Powers (then mayor of Opelousas) by

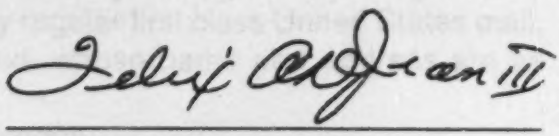
appointing Soileau as executive director." Again, by following the dictates of McDonald, the burden then shifted to Cunningham to establish that this was only a pretext for discrimination which Mrs. Cunningham failed to do so. The record clearly supports this. On appeal to the Fifth Circuit Court of Appeals, that Court applied the clearly erroneous standard to the decision of the Trial Court, following the dictates of Pullman-Standard v. Swent, 456 U.S. 273, 102 Supreme Court 1781 (1982). The Appellate Court found that once the case has been fully tried, "the need to analyze each separate function of the McDonald analysis drops from the case." Lyford v. Schilling, 750 Fed.2d 1341, Fifth Circuit 1985. As such, the Court found that after carefully reviewing this case the Appellate Court was not left with a definite firm conviction that a mistake had been committed by the District Court. Additionally, the Court also found that the District Court did not commit any error in allowing the District Court to call his own witnesses in order to satisfy the ends of justice. The Court found that the submission of additional evidence after the Trial Court did not prejudice either the defendant or the petitioner as each side had an opportunity to examine the additional witness.

CONCLUSION

This Court should deny the petition for a writ of certiorari.

Respectfully submitted,

LAW OFFICES OF FELIX A. DEJEAN, III

BY: 

FELIX A. DEJEAN, III
Attorney for Respondent,
Housing Authority of the City
of Opelousas d/b/a Opelousas
Housing Authority
129 North Court Street
Opelousas, Louisiana 70570
Telephone: 318/948-8276

CERTIFICATE OF SERVICE

I, FELIX A. DEJEAN, III, counsel for respondent, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 14th day of November, 1985, I served three copies of the brief of respondents in opposition to petition for a writ of certiorari by serving the opposing counsel of record for petitioner by regular first class United States mail, properly postage prepaid, whose name and address are as follows:

Raymond L. Simmons
Attorney At Law
1606 Scenic Highway
Baton Rouge, Louisiana 70802

Aaron Harris
Attorney At Law
102 East Church Street
Opelousas, Louisiana 70570

Opelousas, Louisiana, this 14th day of November, 1985.

Felix A. DeJean III

FELIX A. DEJEAN, III
Attorney At Law
129 North Court Street
Opelousas, Louisiana 70570
Telephone: 318/948-8276